**IN T**HE HIGH COURT OF JUDICATURE AT BOMBAY

**APPELLATE SIDE**

CRIMINAL APPLICATION NO.2981 OF 2005

IN

CRIMINAL WRIT PETITION NO.1008 OF 2005

Sri Mukesh Mulchand Bansal .... Applicant/

Vs.

State of Maharashtra .... Respondent

Shri G.B. Badiger for the Applicant/Petitioner.

Shri Bharat Mehta, Addl. Public Prosecutor,

for the Respondent.

**CORAM:** R.M.S. KHANDEPARKAR &

P.V. KAKADE, JJ.

**DATED:** MAY 04, 2005

**P.C:**

1. Heard. This is an application filed for setting aside the order passed on 26-4-2005 by this Court in Criminal Writ Petition No.1008 of 2005 and for leave to fix the said writ petition for hearing on merits.

2. The Criminal Writ Petition No.1008 of 2005 was dismissed by a speaking order passed on 26-4-2005 after

considering the case on merits and taking into consideration the fact that there was no substance in the petition and not on the ground of non-prosecution of the petition though the Advocate for the applicant/petitioner was not present on that occasion. In fact the said order clearly discloses that on perusal of the records it was found that the FIR registered at two different police stations related to two different transactions and therefore there was no substance in the contention of the petitioner that both the FIR were relating to the same transaction or that there was violation of the right assured to the petitioner under Article 20 of the Constitution. Being so, the question of recalling the said order merely on the ground that the petitioner's Advocate was not heard does not arise at all. In fact, once an order is passed disposing of a matter with reference to the merits of the case, it leaves the Court functus officio as far as the matter is concerned.

3. However, considering the grievance made in the application in question, the learned Advocate for the petitioner was even heard on the merits of the case in the said writ petition to ascertain whether there is any substance in the grievance of the petitioner. Attention was drawn to both the FIR, namely, FIR No.1/2004, registered at the Borivali police station and the another bearing No.63/2004, registered at the Bhayander

police station. Plain reading of both the FIR discloses that the first FIR relates to the grievance of the complainant therein being regarding cheating and fraud by the persons named in the said FIR as the accused persons. It appears that though the name of the petitioner was not disclosed in the said FIR as the accused, as his involvement was revealed to the investigating agency, he came to be arrested and detained in custody for some time. The second FIR bearing No.63/2004 relates to the complaint on behalf of the Indian Bank against various persons who are stated to have caused loss to the said bank by preparing forged documents and those persons include the petitioner. While the former complaint relates to fraud being played by various persons affecting various businessmen and banking institutions as well as the Government, the second complaint relates to the loss caused to the Indian Bank. The learned Advocate for the petitioner may perhaps be justified in contending that some part of the evidence in relation to the accusation in both the FIR may be the same, but that by itself does not make the two FIR to relate to the same transaction. On the basis of the FIR themselves, they disclose to be relating to two different transactions and, therefore, on merits there being no case for the petitioner, merely because the petitioner's Advocate was not heard while dismissing the said petition, would not be a justification for recall of the order of dismissal of

the said petition.

4. For the reasons stated above, therefore, the application does not merit any consideration and hence the same is rejected.

**(R.M.S. Khandeparkar, J.)**

**(P.V. Kakade, J.)**